

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

In re Terrorist Attacks on September 11, 2001	03 MDL 1570 (GBD)(SN) ECF Case
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This document relates to:

Horace Morris, et al. v. Islamic Republic of Iran, No. 1:18-cv-05321 (GBD)(SN)

**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR LEAVE TO
AMEND TO CORRECT ERRORS**

Plaintiffs by undersigned counsel submit this Memorandum of Law in Support of Motion for Leave to Amend to Correct Errors, and say:

BACKGROUND

Plaintiffs are comprised of personal representatives and eligible family members of individuals killed in the terrorist attacks against the United States on September 11, 2001 (the “September 11th Attacks”). The only defendant in this case is Iran. On June 14, 2018, Plaintiffs commenced suit against Iran by the filing of a Complaint. ECF 6.¹ Iran was served on July 20, 2018 pursuant to 1608(a)(4). ECF 25. Iran failed to serve an answer or otherwise file a responsive pleading within sixty (60) days after service, and the Clerk issued a Certificate of Default on January 24, 2019. ECF 54. Plaintiffs have not yet applied for either a finding of liability or a judgment on damages.

Plaintiffs’ counsel conducted extensive quality control before filing and has continued its quality control process after filing the Complaint, during which time it has continued to obtain additional information from clients and family members of clients to complete its files. In so doing, counsel has determined that certain minor errors were contained in the Complaint filed in

¹ All ECF citations are to the individual docket in *Horace Morris, et al. v. Islamic Republic of Iran, No. 1:18-cv-05321 (GBD)(SN)*.

the above-referenced matter, such as name misspellings, incorrect states of residence, and certain plaintiffs were incorrectly identified with respect to their relationship to the individual who died in the September 11th Attacks (e.g., a sibling of the victim incorrectly identified as a child). None of the corrections constitute substantial changes that would potentially warrant additional service of an amended pleading on Iran.

Through the instant Motion, Plaintiffs seek to correct such errors before proceeding to default judgment so as to ensure the record is accurate. None of the modifications requested herein affect the substantive claims or relief sought. No new claims are asserted, and no additional plaintiffs have been added. Moreover, because the changes are insubstantial, no additional service on Iran is required.

ARGUMENT

I. LEGAL STANDARD

The Federal Rules of Civil Procedure make clear that leave to amend the complaint should be "freely given when justice so requires." Fed. R. Civ. P. 15(a) "This 'permissive standard . . . is consistent with [the] strong preference for resolving disputes on the merits.'" *Media Glow Dig., LLC v. Panasonic Corp. of N. Am.*, 2018 U.S. Dist. LEXIS 207922, at *12 (S.D.N.Y. Dec. 10, 2018) quoting *Loreley Fin. (Jersey) No. 3 Ltd. v. Wells Fargo Sec., LLC*, 797 F.3d at 190. Leave to amend should only be denied in "instances of futility, undue delay, bad faith or dilatory motive, repeated failure to cure deficiencies by amendments previously allowed, or undue prejudice to the non-moving party." *Burch v. Pioneer Credit Recovery, Inc.*, 551 F.3d 122, 126 (2d Cir. 2008). It is well settled that "[d]istrict courts are vested with broad discretion to grant a party leave to amend the pleadings." *Ruggles v. Wellpoint, Inc.*, 687 F. Supp. 2d 30, 33 (N.D.N.Y. 2009).

A. Plaintiff's Request for Leave to Amend Should Be Granted Under the Permissive Standard Set Forth In Rule 15(a).

Here, Plaintiffs only seek to correct what can best be characterized as typographical errors. There are no new claims asserted or any change in the substantive relief sought. Instead, the record will be made to accurately reflect the names, states of residence, and other data of each of the Plaintiffs. Such proposed amendments, as specifically itemized below, clearly do not constitute “instances of futility, undue delay, bad faith or dilatory motive, repeated failure to cure deficiencies by amendments previously allowed, or undue prejudice to the non-moving party” and, therefore, should be permitted. *Burch v. Pioneer Credit Recovery, Inc.*, 551 F.3d 122, 126 (2d Cir. 2008).

i. Plaintiff Name Corrections:

The following Plaintiff's names were misspelled, should have included an “also known as” or a “minor” designation, or should have had a more specific Personal Representative designation:

	Case Number	Plaintiff's Name as Pled	Plaintiff's Name as Amended
1.	4th Amendment 18-cv-05321	Bergen, Quenna	Bergen, Queena
2.	1:18-cv-05321	Cobb McLenzie, Jennifer	McKenzie, Jennifer Cobb
3.	2nd Amendment 18-cv-05321	Diaz, Ana Sylvia	Diaz, Ana Silvia
4.	3rd Amendment 18-cv-05321	VHK ²	Thomas Knobel, as Natural Guardian of VHK, a minor, as surviving child of Tu-Anh Pham
5.	5th Amendment 18-cv-05321	Pavinski, Michele	Flannery, Michele
6.	1:18-cv-05321	Horowitz, Jennifer	Horwitz, Jennifer
7.	2nd Amendment 18-cv-05321	Oitice Murray, Jessica	Oitice Marrero, Jessica
8.	1:18-cv-05321	Parham, Leno	Parham Jr., Leno
9.	3rd Amendment 18-cv-05321	Pearlman Mason, Lisa	Pearlman-Mason, Lisa
10.	3rd Amendment 18-cv-05321	Perry, Glen Jr.	Perry Jr., Glenn
11.	4th Amendment 18-cv-05321	KR ³	Hopeton Richards, as Natural Guardian of KR, a minor, as surviving child of Venesha Richards

² Plaintiff's full name was inadvertently included in the initial pleading.

³ Plaintiff's full name was inadvertently included in the initial pleading.

	Case Number	Plaintiff's Name as Pled	Plaintiff's Name as Amended
12.	4th Amendment 18-cv-05321	Rivera, Carmen	Rivera, Carmen Alvarado
13.	5th Amendment 18-cv-05321	CR ⁴	Sandra Romagnolo, as Natural Guardian of CR, a minor, as surviving child of Joseph M. Romagnolo
14.	5th Amendment 18-cv-05321	Roy, Caitlin	Roy, Caitlyn
15.	1:18-cv-05321	Russo, Delores	Russo, Dolores
16.	1:18-cv-05321	Salomon Macharie, Dania	Salomon Macharie, Dania ALSO KNOWN AS Salomon, Dania
17.	1:18-cv-05321	Sanay, Hugo	Sanay Jr., Hugo
18.	1st Amendment 18-cv-05321	Murray Waldman, Valerie	Waldman, Valerie J.
19.	3rd Amendment 18-cv-05321	Wells, Chin	Wells, Chin Sok
20.	1:18-cv-05321	Morris, Horace	Morris, Horace, individually, as surviving spouse of Odessa V. Morris, and as the Personal Representative of the Estate of Odessa V. Morris, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Odessa V. Morris
21.	1:18-cv-05321	Morrone, Linda	Morrone, Linda, individually, as surviving spouse of Ferdinand Morrone, and as the Personal Representative of the Estate of Ferdinand Morrone, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Ferdinand Morrone
22.	1:18-cv-05321	Jebrine, George	Jebrine, George, as the Personal Representative of the Estate of Jude Moussa, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Jude Moussa
23.	1:18-cv-05321	Mowatt, Andrea	Mowatt, Andrea, individually, as surviving parent of Damion Mowatt, and as the Personal Representative of the Estate of Damion Mowatt, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Damion Mowatt
24.	1:18-cv-05321	Mulligan, Patricia	Mulligan, Patricia, individually, as surviving sibling of Dennis M. Mulligan, and as the Personal Representative of the Estate of Dennis M. Mulligan, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Dennis M. Mulligan

⁴ Plaintiff's full name was inadvertently included in the initial pleading.

	Case Number	Plaintiff's Name as Pled	Plaintiff's Name as Amended
25.	1:18-cv-05321	Murray, Michael	Murray, Michael, individually, as surviving child of Valerie V. Murray, and as the Personal Representative of the Estate of Valerie V. Murray, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Valerie V. Murray
26.	1:18-cv-05321	Nedd, Roxanne	Nedd, Roxanne, individually, as surviving spouse of Jerome O. Nedd, and as the Personal Representative of the Estate of Jerome O. Nedd, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Jerome O. Nedd
27.	1:18-cv-05321	Nesbitt, Leslie	Nesbitt, Leslie, individually, as surviving sibling of Oscar F. Nesbitt, and as the Personal Representative of the Estate of Oscar F. Nesbitt, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Oscar F. Nesbitt
28.	1:18-cv-05321	Nevins, Marie	Nevins, Marie, individually, as surviving spouse of Gerard T. Nevins, and as the Personal Representative of the Estate of Gerard T. Nevins, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Gerard T. Nevins
29.	1:18-cv-05321	Ngo, Man	Ngo, Man, individually, as surviving spouse of Nancy Yuen Ngo, and as the Personal Representative of the Estate of Nancy Yuen Ngo, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Nancy Yuen Ngo
30.	1:18-cv-05321	Orloske, Duane	Orloske, Duane, individually, as surviving spouse of Margaret Orloske, and as the Personal Representative of the Estate of Margaret Orloske, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Margaret Orloske
31.	1:18-cv-05321	Ortiz, Illianette	Ortiz, Illianette, individually, as surviving spouse of David Ortiz, and as the Personal Representative of the Estate of David Ortiz, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of David Ortiz

	Case Number	Plaintiff's Name as Pled	Plaintiff's Name as Amended
32.	1:18-cv-05321	Fernandez, Maria	Fernandez, Maria, individually, as surviving spouse of Isidro D. Ottenwalder, and as the co-Personal Representative of the Estate of Isidro D. Ottenwalder, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Isidro D. Ottenwalder
33.	1:18-cv-05321	Pabon, Karen	Pabon, Karen, individually, as surviving spouse of Israel Pabon, and as the Personal Representative of the Estate of Israel Pabon, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Israel Pabon
34.	1:18-cv-05321	Patrocino, Sandra	Patrocino, Sandra, individually, as surviving spouse of Manuel D. Patrocino, as the Personal Representative of the Estate of Manuel D. Patrocino, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Manuel D. Patrocino
35.	1:18-cv-05321	Pearlman, Dorie	Pearlman, Dorie, individually, as surviving parent of Richard A. Pearlman, and as the Personal Representative of the Estate of Richard A. Pearlman, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Richard A. Pearlman
36.	1:18-cv-05321	Perez, Mariana Z.	Perez, Mariana Z., individually, as surviving spouse of Alejo Perez, and as the Personal Representative of the Estate of Alejo Perez, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Alejo Perez
37.	1:18-cv-05321	Perez, Mario	Perez, Mario, individually, as surviving parent of Nancy E. Perez, and as the Personal Representative of the Estate of Nancy E. Perez, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Nancy E. Perez
38.	1:18-cv-05321	Perry, Melissa	Perry, Melissa, individually, as surviving child of Emelda Perry, and as the Personal Representative of the Estate of Emelda Perry, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Emelda Perry

	Case Number	Plaintiff's Name as Pled	Plaintiff's Name as Amended
39.	1:18-cv-05321	Perry, Peggy	Perry, Peggy, individually, as surviving spouse of Glenn Perry Sr., and as the Personal Representative of the Estate of Glenn Perry Sr., deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Glenn Perry Sr.
40.	1:18-cv-05321	Peterson, Robin	Peterson, Robin, individually, as surviving spouse of William R. Peterson, and as the Personal Representative of the Estate of William R. Peterson, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of William R. Peterson
41.	1:18-cv-05321	Felice, Tara	Felice, Tara, individually, as surviving sibling of Glen Pettit, and as the Personal Representative of the Estate of Glen Pettit, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Glen Pettit
42.	1:18-cv-05321	Knobel, Thomas	Knobel, Thomas, individually, as surviving spouse of Tu-Anh Pham, and as the Personal Representative of the Estate of Tu-Anh Pham, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Tu-Anh Pham
43.	1:18-cv-05321	Romero, Adela	Romero, Adela, individually, as surviving parent of Giovanna Porras, and as the Personal Representative of the Estate of Giovanna Porras, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Giovanna Porras
44.	1:18-cv-05321	Pugliese, Maureen	Pugliese, Maureen, individually, as surviving spouse of Robert D. Pugliese, and as the Personal Representative of the Estate of Robert D. Pugliese, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Robert D. Pugliese
45.	1:18-cv-05321	Quappe, Jane	Quappe, Jane, individually, as surviving spouse of Lincoln Quappe, and as the Personal Representative of the Estate of Lincoln Quappe, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Lincoln Quappe

	Case Number	Plaintiff's Name as Pled	Plaintiff's Name as Amended
46.	1:18-cv-05321	Ramsaur, John	Ramsaur, John, individually, as surviving spouse of Deborah Ramsaur, and as the Personal Representative of the Estate of Deborah Ramsaur, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Deborah Ramsaur
47.	1:18-cv-05321	Reszke, James	Reszke, James, individually, as surviving spouse of Martha M. Reszke, and as the Personal Representative of the Estate of Martha M. Reszke, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Martha M. Reszke
48.	1:18-cv-05321	Riccardelli, Theresa	Riccardelli, Theresa, individually, as surviving spouse of Francis Riccardelli, and as the Personal Representative of the Estate of Francis Riccardelli, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Francis Riccardelli
49.	1:18-cv-05321	Keegan, Brian	Keegan, Brian, individually, as surviving child of Eileen M. Rice, and as the co-Personal Representative of the Estate of Eileen M. Rice, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Eileen M. Rice
50.	1:18-cv-05321	Richards, Hopeton	Richards, Hopeton, individually, as surviving spouse of Venesha Richards, and as the Personal Representative of the Estate of Venesha Richards, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Venesha Richards
51.	1:18-cv-05321	Rivera Sr., Luis E.	Rivera Sr., Luis E., individually, as surviving spouse of Carmen A. Rivera, and as the Personal Representative of the Estate of Carmen A. Rivera, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Carmen A. Rivera

	Case Number	Plaintiff's Name as Pled	Plaintiff's Name as Amended
52.	1:18-cv-05321	Rivera, Jose	Rivera, Jose R. ALSO KNOWN AS Rivera, Jose Ramos, individually, as surviving parent of Linda I. Rivera, and as the co-Personal Representative of the Estate of Linda I. Rivera, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Linda I. Rivera
53.	1:18-cv-05321	Romagnolo, Sandra	Romagnolo, Sandra, individually, as surviving spouse of Joseph M. Romagnolo, and as the Personal Representative of the Estate of Joseph M. Romagnolo, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Joseph M. Romagnolo
54.	1:18-cv-05321	Horwitz, Jennifer	Horwitz, Jennifer, individually, as surviving spouse of Mark L. Rosenberg, and as the Personal Representative of the Estate of Mark L. Rosenberg, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Mark L. Rosenberg
55.	1:18-cv-05321	Roy-Christ, Stacey	Roy-Christ, Stacey, individually, as surviving spouse of Timothy A. Roy, and as the Personal Representative of the Estate of Timothy A. Roy, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Timothy A. Roy
56.	1:18-cv-05321	Hans, Hillary	Hans, Hillary, individually, as surviving sibling of Ronald J. Ruben, and as the co-Personal Representative of the Estate of Ronald J. Ruben, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Ronald J. Ruben
57.	1:18-cv-05321	Ruggiero, Frank	Ruggiero, Frank, individually, as surviving spouse of Susan A. Ruggiero, and as the Personal Representative of the Estate of Susan A. Ruggiero, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Susan A. Ruggiero

	Case Number	Plaintiff's Name as Pled	Plaintiff's Name as Amended
58.		Salas, Carlos	Salas, Carlos, individually, as surviving child of Hernando R. Salas, and as the Personal Representative of the Estate of Hernando R. Salas, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Hernando R. Salas
59.		Salie, Haleema	Salie, Haleema, individually, as surviving parent of Rahma Salie, and as the Personal Representative of the Estate of Rahma Salie, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Rahma Salie
60.		Scheffold, Joan	Scheffold, Joan, individually, as surviving spouse of Frederick C. Scheffold, and as the Personal Representative of the Estate of Frederick C. Scheffold, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Frederick C. Scheffold
61.		Schlegel, Dawn	Schlegel, Dawn, individually, as surviving spouse of Robert A. Schlegel, and as the Personal Representative of the Estate of Robert A. Schlegel, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Robert A. Schlegel
62.		Wells, Norman	Wells, Norman, individually, as surviving parent of Chin Sun Pak Wells, and as the Personal Representative of the Estate of Chin Sun Pak Wells, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Chin Sun Pak Wells

ii. Decedent Name Corrections:

The following Decedent's names were misspelled or should have included an "also known as" or a "minor" designation:

	Case Number	Decedent's Name as Pled	Decedent's Name as Amended
1.	3rd Amendment 18-cv-05321	Perry, Glen Sr.	Perry Sr., Glenn
2.	1:18-cv-05321	Sanchez, Alva Cynthia Jeffries	Jeffries-Sanchez, Alva Cynthia
3.	1:18-cv-05321	Pak-Wells, Chin Sun	Wells, Chin Sun Pak

iii. Plaintiff Whose Claim is Solely in Individual Capacity

The following Plaintiff has only a solatium claim and is not the administrator of an estate.

	Case Number	Plaintiff's Name	Claim as Pled	Claim as Amended
1.	1:18-cv-05321	Oitice, Samuel	Solatium/Wrongful Death	Solatium

iv. Plaintiffs' Whose Relationship to 9/11 Decedent is Incorrectly described:

The familial relationship to the 9/11 Decedent of the following Plaintiffs was incorrectly described:

	Case Number	Plaintiff's Name	Plaintiff's Relationship to 9/11 Decedent as Pled	Plaintiff's Relationship to 9/11 Decedent as Amended
1.	1:18-cv-05321	Oitice, Samuel	Son/PR	Son
2.	1:18-cv-05321	Fernandez, Maria	Spouse/PR	Spouse/co-PR
3.	1:18-cv-05321	Perry, Melissa	Mother/PR	Daughter/PR
4.	4th Amendment 18-cv-05321	Rodgers, Omar	Sister	Brother
5.	4th Amendment 18-cv-05321	Bergen, Lelith	Brother	Mother

v. Decedent Whose Citizenship/Nationality on 9/11 is Incorrectly described:

The Decedent's Citizenship/Nationality on 9/11 of the following Plaintiffs was incorrectly described:

	Case Number	Decedent's Name	9/11 Decedent's Citizenship/ Nationality on 9/11/01 as Pled	9/11 Decedent's Citizenship/ Nationality on 9/11/01 as Amended
1.	1:18-cv-05321	Sanay, Hugo	United States	Ecuador

B. No Additional Service Is Required Because The Changes Contained In The Amended Pleadings Are Insubstantial.

In this case, Plaintiffs properly served Iran in accordance with the Foreign Sovereign Immunities Act and, after Iran failed to timely respond, the Clerk of Court issued a Certificate of Default. *See* ECF 54. Plaintiffs now seek to make the aforementioned corrections, which are insubstantial. It is well settled that no additional service is required under these circumstances: “Where a plaintiff serves a complaint on a foreign state defendant under the FSIA, the foreign state defaults, and then the plaintiff files an amended complaint, service of the new complaint is only necessary if the changes are ‘substantial.’” *Shoham v. Islamic Republic of Iran*, 922 F. Supp. 2d 44, 47 (D.D.C. 2013) *citing*, *Belkin v. Islamic Republic of Iran*, 667 F. Supp. 2d 8, 20 (D.D.C. 2009) (“Service of the original complaint was effected on all three Defendants under 28 U.S.C. § 1608(a)(4). Plaintiff did not serve the amended complaint on defendants. Where changes made in an amended complaint are ‘not substantial,’ the requirement of Rule 5(a)(2) of the Federal Rules of Civil Procedure that a pleading that states a new claim for relief against a party in default must be served on that party is not applicable.”); *Blais v. Islamic Republic of Iran*, 459 F. Supp. 2d 40, 46 (D.D.C. 2006) (“Even were these changes characterized as substantive Iran, the MOIS and the IRGC had fair notice of the allegations and relief sought, because the changes to the third amended complaint were not substantial. ...Accordingly, this Court will not require plaintiff to serve the amended complaint.”); *Dammarell v. Islamic Republic of Iran*, 370 F. Supp. 2d 218, 225 (D.D.C. 2005) (“[S]ection 1608 is inapplicable in the setting where the defendant foreign state has failed to appear, and is therefore in default, and where an amendment does not add any claims but instead clarifies existing claims.”)

In this case, the Plaintiffs only seeks to correct typographical errors and certain inaccuracies regarding the relationship of the Plaintiff to the September 11th decedent, or to

otherwise clarify the record. Because these changes are insubstantial, no additional service of the amended pleadings should be required.

CONCLUSION

The corrections requested by Plaintiffs are clerical in nature and serve to clarify the record. They do not affect the substance of any claims made in the above-referenced action. Moreover, the corrections are necessary to the administration of justice inasmuch as not making them will potentially affect the rights of the incorrectly identified plaintiffs to enforce and collect on any judgment this Court enters in their favor. For the foregoing reasons, Plaintiffs respectfully request that this Court permit the proposed amendments without requiring service on Iran.

Dated: March 22, 2019

/s/ Jerry S. Goldman

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